IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10-12-2004

Coram

The Honourable Mr.Justice A.K.RAJAN

Writ Petition No.15267 of 2001

Punjab National Bank Ltd.,
Zonal Office,
Chennai - 6.
Petitioner (Cause title amanded
as per order of Court dt. 22.9.03
in WPMP. NO. 31384/03 ... Petitioner

Vs.

1. A.K.Jayaprakash

2. Deputy Commissioner of Labour,
Tirunelveli - 2. ... Respondents

This writ petition has been filed under Article 226 of Constitution of India, praying this Court to issue a writ of Certiorari calling for the records of the second respondent made in TNSE 2/99(M) IN TNSE 1/88 dated 23.4.2001 and quash the same.

For Petitioner : Mr.R.Krishnamurthy,
Senior Counsel
for Mr.V.Girish Kumar

For Respondents : Mr.T.R.Rajagopalan,
Senior Counsel
for Mr.T.R.Rajaraman

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O R D E R

This petition has been filed against the order passed by the appellate authority under the Tamil Nadu Shops and Establishment Act, 1947.

2. The first respondent was employed in the Bank and during the year 1981, charges were framed against him on the ground that he granted loans exceeding his limits and granted

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overdrafts without getting permission from the headquarters and that he discounted the cheques without the approval and did not furnish the returns in time. The second charge memo relates to granting of loan without obtaining security, not recovered the discounted cheques and granted overdrafts to one Industry without the approval of the head office. On these charges, an enquiry was conducted and after completing the formalities, the delinquent officer/first respondent was dismissed from the services.

3. Against the dismissal order, he moved the appellate authority under the Tamil Nadu Shops and Establishments Act. The appellate authority found that there was no mala fide intention in the activities of the delinquent officer. The appellate authority also found that during his tenure, the Bank has improved its volume of business and that the Bank has not incurred any loss as almost 90% of the amounts were recovered from the Officer long back and even the balance 10% was also recovered subsequently.

4. Mr.R.Krishnamurthy, learned senior counsel appearing for the Bank submitted that the order of the appellate authority is perverse for the reason that the Officer has admitted all his mistakes. When the officer himself admitted his mistakes, the appellate authority ought not to have ordered reinstatement with backwages.

5. Mr.T.R.Rajagopalan, learned senior counsel appearing for the delinquent officer/first respondent submitted that the admission is only with regard to the mistake on his part in not getting prior sanction or approval and it is not that he has misappropriated bank's fund. In fact, during his tenure, he has improved the business of the bank. Therefore, the order of the appellate authority is legally sustainable and cannot be interfered with.

6. From a reading of the charges it is seen that the Officer has done some acts without getting the permission of his superiors. But as rightly held by the appellate authority, it was not with any mala fide intention. It is not the case of the Bank that the Officer has gained anything by granting loans. It is common knowledge to give overdraft facilities, at times even exceeding the limits; and discounting of bills is a regular business entertained by the banks. By discounting bills, banks earn profit. Further, by the act of the delinquent officer, the bank has not incurred any loss. In these circumstances, this Court is of the view that there is no mala fide intention on the part of the delinquent officer/first respondent and in fact the business of the bank has improved during his tenure. Hence,

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dismissal of the first respondent is not legally sustainable. There is no illegality or irregularity in the order passed by the appellate authority.

7. With regard to back wages, the appellate authority ordered reinstatement with full backwages. Considering that 20 years have passed since the officer is out of service, and that he would have engaged himself in some other activities all these years, this Court is of the view that it would be sufficient if the bank pays 60% of backwages and he shall be reinstated immediately, in any event within a period of four weeks from the date of receipt of copy of this order and there will be an order accordingly.

8. The writ petition is dismissed with the above observations. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

vr

To
The Deputy Commissioner of Labour, Tirunelveli - 2.

1cc to Mr. V. Girish Kumar, Advocate, SR. 54271

W.P.No.15267 of 2001

JP (CO)
kk 28.12.04

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